87-990

Supreme Court U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

Supreme Court of the United States

OCTOBER TERM, 1987

CLEVELAND RISER, JR.
Petitioner

versus

LASALLE PARISH SCHOOL BOARD, ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

I. Whether or not Cleveland Riser, Jr. was afforded due process and equal protection under the laws of the United States in the presentation of facts, evidence, and testimony to the trial court on the charges of racial discrimination pursuant to 42 U.S.C.A. Section 1981 and 42 U.S.C.A. Section 1983 as contained in the plaintiff's original complaint.

CERTIFICATE OF INTERESTED PARTIES REQUIRED BY THE UNITED STATES SUPREME COURT
Rule 21.1(b)

The undersigned counsel of record for the petitioner, Cleveland Riser, Jr., certifies that the following listed parties have an interest in the outcome of this case:

Cleveland Riser, Jr., Plaintiff-Petitioner
Gregory S. Erwin, Attorney for Plaintiff-Petitioner
S. Scott Chemino, Attorney for Plaintiff-Petitioner
LaSalle Parish School Board, Defendant-Respondent
Edgar J. Bass, Superintendent
Shelby Norris
Robert Coleman
W.D. Poole
Bill Hester
Robert Ponds
Harland Morgan
W.B. McCartney
Robert Day
J.D. Frazier
Ira Ganey
James J. Brady, Attorney for Defendant-Respondant
Bernard Marcus, Attorney for Defendant-Respondant

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1.) *Arlington Heights v. Metro Housing Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).
2.) *Holley v. Seminole County School District*, 755 F.2d 1492 (1985).
3.) *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1943, 52 L.Ed.2d 396 (1977).
4.) *Johnson v. Lincoln University of Commonwealth System of Higher Education*, 776 F.2d 443 (1985).
5.) *Lee v. Conecuh County Board of Education*, 634 F.2d 959 (1981).
6.) *Lee v. Washington County Board of Education*, 625 F.2d 235 (5th Cir. 1980).
7.) *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).
8.) *Paschal v. Florida Public Employment Relations Commission*, 666 F.2d 1381, at 1384 (11th Cir.) cert. denied, 457 U.S. 1109, 102 S.Ct. 2911, 73 L.Ed.2d 1319 (1982).
9.) *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 240, 48 L.Ed.2d 597 (1976).
10.) *Williams v. Anderson*, 562 F.2d 1081 (1977).
11.) *Williams v. Day*, 553 F.2d 1160 (1977).

Statutes and Regulations:

1.) 28 U.S.C.A. 1254(1)
2.) 28 U.S.C.A. 1291
3.) 28 U.S.C.A. 1331(a)
4.) 42 U.S.C.A. 1981
5.) 42 U.S.C.A. 1983
6.) Amendments I and XIV (Section 1), United States Constitution

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LASALLE PARISH SCHOOL BOARD, ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Cleveland Riser, Jr., prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on July 23, 1987, with petition for rehearing denied on August 31, 1987.

OPINIONS BELOW

The opinion and order of the District Court for the Western District of Louisiana No. 83-2237 has not been officially reported but is contained in the record.

The opinion and order of the Court of Appeals for the Fifth Circuit, No. 87-4098, has not been officially reported but is contained in the record.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was made and entered on July 23, 1987; the judgment denying the request for rehearing was made on August 31, 1987.

The judgment of the United States District Court for the Western District of Louisiana, Alexandria Division, was made and entered on February 3, 1987.

The jurisdiction of this court is invoked pursuant to 28 U.S.C.A. Section 1254(1).

CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES AND FEDERAL RULES

1.) 28 U.S.C.A. 1254(1)

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or ciminal case, before or after rendition of the judgment or decree;"

2.) 28 U.S.C.A. 1291

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

3.) 28 U.S.C.A. 1331(a)

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

4.) 42 U.S.C.A. 1981

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

5.) 42 U.S.C.A. 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

6.) United States Constitution Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

7.) United States Constitution Amendment XIV (Section 1)

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Cleveland Riser, Jr., a black citizen, filed the instant action on Sept. 23, 1983, alleging that his termination of employment from the LaSalle Parish School Board on June 3, 1983, violated the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C.A. Sections 1981 and 1983. This is the most recent legal action taken by the plaintiff to correct various deprivations of civil rights which he has suffered through a pattern and history of racial discrimination practiced by the LaSalle Parish School Board.

On May 3, 1983, Cleveland Riser, Jr. was served with written charges of wilfull neglect of duty, incompetency, and dishonesty by his employer, the LaSalle Parish School Board. These charges were brought by the school board against Riser pursuant to seven alleged instances of sexual harassment of female, adult education students directly under Riser's supervision.

A hearing on the foregoing charges was held by the school board on June 2 and 3, 1983, at which the school board and the plaintiff were each represented by counsel. Both parties presented witnesses who were examined and cross-examined, and closing arguments were made by both parties. The evidence and witnesses presented at the hearing were confined strictly to the charges of sexual harassment with no opportunity being given to Riser to raise allegations of racial discrimination and deprivation of rights, privileges, and immunities which form the basis of the instant lawsuit. The school board, which had hired a private investigator and a private prosecutor, found Riser guilty of the seven charges of sexual harassment and dismissed him from employment effective immediately.

As a result of the termination, the present lawsuit was filed and trial of this matter was held before the United

States District Court for the Western District of Louisiana, Alexandria Division, on January 7, 1987. On the morning of the trial, a pre-trial conference was held which resulted in the trial court refusing to allow the plaintiff to present nine of eleven witnesses prepared to testify during the plaintiff's case-in-chief. This exclusion of witnesses and testimony was objected to by the plaintiff's counsel. The action of excluding the witnesses and testimony by the trial court resulted in a failure of the court to take into consideration the issues contained in the plaintiff's complaint which forms the basis of this writ application. The court critically limited the receipt of testimony and evidence and prevented the plaintiff from substantiating and proving the allegations contained in the plaintiff's original complaint. Moreover, the trial court did not allow the presentation of testimony and evidence which was necessary to properly apply the standards and tests that are associated with the proper adjudication of civil rights actions.

Upon receipt of an adverse ruling from the trial court on February 3, 1987, the plaintiff presented this cause to the United States Court of Appeals for the Fifth Circuit. The issue presented to the Court of Appeals was whether the restrictive actions of the court in disallowing specific testimony and evidence sought to be presented by the plaintiff was proper. The Court of Appeals affirmed the trial court's ruling. A petition for rehearing was timely filed by the plaintiff on August 4, 1987. The petition for rehearing was denied by the appeals court on August 31, 1987.

The present application for writ of certiorari to the United States Supreme Court is made pursuant to the order denying the petition for rehearing issued by the United States Court of Appeals for the Fifth Circuit.

The plaintiff's suit was brought at the trial court level

pursuant to 42 U.S.C.A. Sections 1981 and 1983, alleging that he had been terminated from employment in violation of his civil rights. The trial court had jurisdiction based upon 28 U.S.C.A. Section 1331 and 42 U.S.C.A. Sections 1981 and 1983. The United States Court of Appeals for the Fifth Circuit had jurisdiction under 28 U.S.C.A. Section 1291.

ARGUMENT OF LAW AND FACTS

Whether or not Cleveland Riser, Jr. was afforded due process and equal protection under the laws of the United States in the presentation of facts, evidence, and testimony to the trial court on the charges of racial discrimination pursuant to 42 U.S.C.A. Section 1981 and 42 U.S.C.A. Section 1983 as contained in the plaintiff's original complaint.

On May 3, 1983, Cleveland Riser, Jr. was served notice from his employer, the LaSalle Parish School Board, that he was being charged with seven allegations of sexual harassment of female students. The summons stated that this harassment of students constituted wilfull neglect of duty, incompetency, and dishonesty and that pursuant to these allegations, a hearing would be conducted by the school board on June 2, 1983.

The scheduled hearing took place on June 2 and 3, 1983, at the LaSalle Parish School Board Office in Jena, Louisiana. At the time of the hearing, Riser and his attorney were confronted with the procedural manipulations of an independent prosecutor hired by the school board, as well as the investigation results of a private investigator paid by the school board to gather evidence against Riser on the alleged charges of sexual harassment. Seven white female students also testified to alleged actions of harassment by Riser. Riser denied all accounts given by the witnesses. All things equal, it remained his word against those of the witnesses called by the school board. At the conclusion of the hearing, the board agreed to terminate Riser from employment.

The hearing was allegedly "closed" upon choice of Cleveland Riser, Jr. However, the school board made no attempt to curtail news media coverage of the allegations

forming the basis of the school board's actions. News of the hearing was contained in both newspaper and radio broadcast accounts. In preparing to counter these allegations, Riser and his counsel of record prepared a defense strictly to those allegations of neglect of duty, incompetency, and dishonesty which were associated with the sexual harassment charges. As understood in the summons, the hearing was strictly limited to those issues. By virtue of the narrow scope of the school board hearing, there was no cause for Riser to present issues concerning racial discrimination or deprivations of his rights, privileges, and immunities. It is evident that it would have been premature to present issues of racial discrimination to the school board since the outcome of the hearing was not yet known. More importantly, Riser was then concerned about defending himself from the allegations of neglect of duty, incompetency, and dishonesty.

Contrary to this fact is the misconceived notion that Riser was afforded every opportunity to "fully ventilate" any issues of racial discrimination at that hearing. It was impossible to present issues of discrimination and deprivations of constitutionally protected rights, privileges, and immunities at a school board hearing of June 2 and 3, 1983, when the plaintiff's lawsuit outlining those grievances had not yet been filed by Riser.

Regardless of these facts, the trial court on January 7, 1987, never allowed Riser the opportunity to present witnesses, testimony, and evidence necessary to prove the allegations contained in Riser's original complaint on which that very trial was being conducted. Simply stated, the district court on January 7, 1987, was charged with the obligation to try the plaintiff's allegations as alleged in his original complaint which was filed September 22, 1983. Instead, the court chose to determine whether the school board hearing had been properly conducted, some-

thing the court said it was not there to do, and then ruled that Riser had not been discriminated against or deprived of any of his rights, privileges, and immunities. This is totally contrary to the jurisprudence applicable to the implementation of 42 U.S.C.A. 1981 and 1983. The Honorable Court of Appeals is also in error for not recognizing this error on the part of the Honorable Trial Court.

The error of the trial court lies in the critical restriction placed on Riser's ability to present a full-scale presentation of witnesses and evidence on the day of the trial. By preventing the plaintiff from substantiating the allegations of his complaint with the testimony of witnesses and the presentation of evidence, both courts have failed to apply the proper burdens of proof, standards, and tests necessary to afford Riser the due process and equal protection that he is guaranteed under the Fourteenth Amendment of the United States Constitution. In effect, these decisions have made the findings of the administrative hearings of June 2 and 3, 1983, final. In so doing, the courts are not affording Riser the opportunity to ventilate his allegations contained in the instant lawsuit.

The trial and appellate courts' actions are tantamount to rendering a summary judgment of the plaintiff's case. The United States Eleventh Circuit Court of Appeals stated in *Holley v. Seminole County School District,* 755 F.2d 1492 (1985), that:

> Where a First Amendment activity is involved, the district court must do a search of its own. When presented with a claim that a faculty member was discharged in retaliation for exercising First Amendment rights, the federal court does not sit simply to review administrative findings or to measure the procedural regularity of the process.

The Eleventh Circuit noted that because Section 1983 vests original, not appellate, jurisdiction in the district court, deference to the administrative record and fact-finding is inappropriate when the claim is that an unconstitutional result could be reached despite procedural regularity and substantial evidence to support the board's conclusion. The *Holly* Court ultimately decided that a discharged or non-renewed teacher asserting a claim of First Amendment rights in certain cases is entitled to a *de novo* hearing in federal court regardless of whether that teacher resorted to an administrative hearing or whether such hearing purported to decide the constitutional issue. The Court found that the policy enunciated by Section 1983 investing original jurisdiction for constitutional claims in a district court requires no less an opportunity to be heard.

Still further, the *Holly* Court stated that "without a searching inquiry into motives, those intent on punishing the exercise of constitutional rights could easily mask their behavior behind a complex web of *post-hoc* rationalizations...the district court fact-finder should have been permitted to assess the board's motivation based upon a full record."

Cleveland Riser, Jr., because of the decision of the trial court and its affirmation by the Court of Appeals, has never been afforded the opportunity to develope a full record and have a United States District Court apply the applicable tests necessary to determine whether Riser's First Amendment rights and further statutory rights have been breached by the actions of the LaSalle Parish School Board.

In *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), the United States Supreme Court found that a trial court must apply a three-pronged test that includes the following in the instant circumstances:

1.) A determination of whether the plaintiff's activity was indeed protected by the First Amendment;
2.) After establishing that the activity was protected, the plaintiff has the initial burden of proving that the conduct was a substantial or motivating factor in the state employer's decision to take adverse employment action against the plaintiff;
3.) And after having done so, the burden shifts to the employer to show by a preponderance of the evidence that the same employment decision would have been rendered absent the protected conduct.

See also: *Paschal v. Florida Public Employment Relations Commission,* 666 F.2d 1381, at 1384 (11th Cir.) cert. denied, 457 U.S. 1109, 102 S.Ct. 2911, 73 L.Ed.2d 1319 (1982).

In differing with the United States Fifth Circuit Court of Appeals action in the instant case, the United States Eighth Circuit Court of Appeals in *Williams v. Day,* 553 F.2d 1160 (1977), found that a district court did not err in considering all of the evidence adduced through trial, including the transcript of a school board hearing, in reaching its decision. The appellant argued that the district court, in ruling on a civil rights complaint, should have confined itself to a review of the evidence presented at the hearing before the school board only. In almost the identical circumstances as the case of Cleveland Riser, Jr., the appellant asserted that because a prior hearing had been held under state law (which would be comparable to the June 1983 hearing of the LaSalle Parish School Board), the district court's role in this Section 1983 case should have been reduced to that of a court reviewing administrative action. In denouncing this position, the Eleventh Circuit Court of Appeals stated:

> No support exists for so restricting a federal district court's function in a case such as this one. While the appellant was free to make the tactical choice of presenting his case-in-chief, except for evidence as to damages, by way of the hearing transcript, this decision in no way barred the introduction of relevant evidence by the defendants.

The distinction between this case and the *Riser* case is that the trial court did bar the introduction of relevant evidence sought to be introduced by Cleveland Riser, Jr.. The only substantial evidence that was allowed by the trial court was the record of the LaSalle Parish School Board transcript. This made the findings of the school board hearing relatively absolute, and denied Riser the opportunity to rebut the events of the school board hearing.

In *Williams v. Anderson,* 562 F.2d 1081 (1977), the United States Eighth Circuirt Of Appeals stated:

> The opinions recognize that admission of discriminatory intent is unlikely, and that intent will ordinarily have to be found by a sensitive inquiry into such circumstantial and direct evidence of intent as may be available, including the impact of the challenged official action, its historical background, and its legislative or administrative history.

In commenting by footnote on the historical background investigation, the court stated:

> Proof that the defendants engaged in racially discriminatory practices and policies prior to the period of time for which relief is available under the statute of limitations is relevant since it creates the inference that the discrimination continued, particularly when there has been little change in the decision-making process.

In excluding a majority of the Riser's witnesses at the January 7, 1987 trial, the trial court prevented the plaintiff from presenting to the court evidence document-

ing a past history of racial discrimination in LaSalle Parish. This factor alone is contrary to civil rights jurisprudence which maintains that proof of an immediate past history of racial discrimination is alone sufficient to shift to the local board of education the burden of justifying its employment decisions by clear and convincing evidence. See: *Lee v. Conecuh County Board of Education,* 634 F.2d 959 (1981), and *Lee v. Washington County Board of Education,* 625 F.2d 235 (5th Cir. 1980). See also: *International Brotherhood of Teamsters v. United States,* 431 U.S. 324, 97 S.Ct. 1943, 52 L.Ed.2d 396 (1977); *Arlington Heights v. Metro Housing Corp.,* 429 U.S. 252, 97 S.Ct. 555, L.Ed.2d 450 (1977); *Washington v. Davis,* 426 U.S. 229, 96 S.Ct. 240, 48 L.Ed.2d 597 (1976).

The trier of fact in the *Riser* case cannot avoid judicial notice of the successes of Cleveland Riser, Jr. prior to 1983 in challenging the discriminatory practices of the LaSalle Parish School Board. In the instant lawsuit, Riser alleges that the action taken against him at the June, 1983, hearing was in retaliation for those previous activities and successes. In relating these circumstances to previous cases with similar circumstances, one may look to the findings of the United States Third Circuit Court of Appeal as enunciated in *Johnson v. Lincoln University of Commonwealth System of Higher Education,* 776 F.2d 443 (1985). Therein, the district court erred in confining itself to some of the charges brought before the review committee when the plaintiff's grievance was much more extensive, including many activities which were not contained in the formal charges brought by the committee against the plaintiff. In *Johnson,* the plaintiff alleged not only that his activities were protected by the First Amendment, but also that the termination proceedings held against him were initiated in order to retaliate against him for the exercise of his right to free speech.

The court agreed that the proper test to apply in such a Section 1983 action would be the *Mt. Healthy* (supra) three-pronged process. This process requires the examination of a public employee's claim of retaliation for engaging in a protected activity such as free speech. However, because of the decision of the trial court and the affirmation coming from the Court of Appeals, Cleveland Riser, Jr. was not afforded the opportunity to present evidence that would have demanded the application of the *Mt. Healthy* test. Riser's previous vocal activities in promoting desegreation of LaSalle Parish Schools was clearly a protected activity under the First Amendment of the United States Constitution. Riser could further demonstrate that his protected activities were substantial or motivating factors in the action taken against him by the LaSalle Parish School Board; this is especially true because of the threat Riser posed as a potential, upcoming Superintendent of Schools for LaSalle Parish. Finally, Riser maintains that the school board would not have been able to overcome the last step of this three-pronged test by showing that it would have terminated Riser even though he had not participated in the desegration action against the school board.

By denying Riser the opportunity to present additional evidence, the trial court failed to afford Riser the protection guaranteed him by the First and Fourteenth Amendments of the United States Constitution. The courts' actions have made the LaSalle Parish School Board immune from the enunciated tests which are now an integral, indispensable part of present-day civil rights litigation. As previously stated, the June, 1983, hearing was not designed to, nor did it afford Cleveland Riser, Jr. the opportunity to air any allegations of racial discrimination or deprivation of constitutional rights, privileges, and immunities.

The Honorable Trial Court, in its reasons for

judgment, has also not effectively disposed of the fact that it never addressed the primary issues contained in Riser's original complaint. Instead, the court reiterates the findings of the LaSalle Parish School Board hearing of June, 1983. In affirming the findings of the trial court, the Honorable Court of Appeals has also erred in not recognizing that Cleveland Riser, Jr. has not been afforded the opportunity to litigate the charges contained in the original complaint which forms the basis of this lawsuit.

According to contemporary civil rights jurisprudence, these findings of the trial court and the Court of Appeals neither afford Cleveland Riser, Jr. the equal protection or the due process of law afforded him pursuant to the statutes and Constitution of the United States. It is therefore necessary that this Supreme Court review the actions and inactions of the trial court and the decisions of the Court of Appeals and that such review be conducted in light of the cases cited herein with other contemporary civil rights jurisprudence. In so doing, the errors of the lower courts can be distinguished and corrected through the application of the properly applicable case and statutory laws. Only by such action will Cleveland Riser, Jr. come to know and enjoy the full protection and process afforded him under the laws of the United States.

CONCLUSION

For the reasons and case law stated herein, petitioner requests that the Supreme Court of the United States grant him writ of certiorari and render a decision on the issues of this case.

Respectfully submitted,

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By _____

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

CLEVELAND RISER, JR.

VERSUS CIVIL ACTION NO. 83-2237

LASALLE PARISH SCHOOL BOARD, ET AL

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Cleveland Riser, Jr., a resident of the Parish of LaSalle, State of Louisiana, who was and now is a duly qualified employee in the public schools of the State of Louisiana, as supervisor of Auxilliary Programs for the LaSalle Parish School Board.

2.

The defendants herein are as follows:

(a) LaSalle Parish School Board, a duly organized school board in the parish of LaSalle, and being a body corporate under the laws of the State of Louisiana;

(b) Edgar J. Bass, Superintendent of Schools for LaSalle Parish;

(c) Individual Board Members of the LaSalle Parish School Board as follows:

W.O. Poole, Bill Hester, Robert Ponds, Shelby Norris, Harland Morgan, W.B. McCartney, Robert Day, J.D. Frazier and Ira Ganey.

3.

All individual defendants are residents of the State of Louisiana.

4.

Jurisdiction herein is based upon 28 U.S.C.A., Section 1331, 42 U.S.C.A., Section 1981, and 42 U.S.C.A., Section 1983, as well as pendent jurisdiction over any State claims alleged herein.

5.

On June 3, 1983, through the recommendation and efforts of Edgar J. Bass, Superintendent of Schools, and upon the unanimous vote of each individual School Board Member listed above, the LaSalle Parish School Board did terminate the employment of Cleveland Riser, Jr.

6.

The termination of Cleveland Riser, Jr. by the LaSalle Parish School Board, and through the efforts of its individual members and the Superintendent of Schools under color of State law, being more particularly Louisiana Revised Statute 17:442, was in violation to the guaranteed civil rights of Cleveland Riser, Jr. in the following particulars:

(a) The First Amendment rights guaranteed by the Constitution of these United States to Cleveland Riser, Jr. were violated in that Cleveland Riser, Jr. did criticize and was and is instrumental in the redistricting action brought by the United States of America against the LaSalle Parish School Board, which exercise of plaintiff's free speech in criticizing the Board and bringing attention to their redistricting practices in violation of the Constitution of the United States, was a part of the motivation of the School Board and the individual defendants herein in seeking the plaintiff's dismissal;

(b) Cleveland Riser, Jr., in exercising his First Amendment rights of freedom of speech and his

rights guaranteed by the United States Constitution Amendment 14 did charge the LaSalle Parish School Board in Civil Action No. 79-0761, United States District Court, Western District of Louisiana, Alexandria Division, with violation of his civil rights and discrimination in failing to hire complainant as Assistant Superintendent of Schools of LaSalle Parish School Board and that the termination referred to above was partially motivated by the defendants herein seeking to silence Cleveland Riser, Jr. and seeking to circumvent his being placed in that position as well as out of fear that Cleveland Riser, Jr. may become the Superintendent of Schools for the LaSalle Parish School system.

(c) The defendants did violate 42 U.S.C.A., Section 1983 in that under color of State law defendants actively participated in and sought the dismissal of Cleveland Riser, Jr. because complainant was of the Negro race, because complainant had criticized the LaSalle Parish School Board, its members and employees in the exercise of his First Amendment rights, because the complainant had exercised his right to sue the LaSalle Parish School Board to be employed as the Assistant Superintendent of Schools, and because the defendants feared that Cleveland Riser, Jr. would become the Superintendent of Schools of said Parish School Board System.

(d) Cleveland Riser, Jr. was terminated from his employment in violation of 42 U.S.C.A., Section 1981 because complainant is a Negro; and, that had the plaintiff been a white citizen said section would not have been taken by the defendants.

(e) Edgar J. Bass did specifically, in violation of Louisiana Revised Statute 17:443, publish

charges and evidence of alleged sexual harrassment against Cleveland Riser, Jr. as reported in the Alexandria Daily Town Talk in violation of Cleveland Riser, Jr.'s request that the hearing be conducted privately.

(f) Cleveland Riser, Jr. was denied equal protection and due process of law in violation of the 14th Amendment to the United States Constitution in that the hearing before the board was a sham because of the bias of its members, insufficient time to prepare for the proceeding, procedural misconduct of the hearing and the decision to terminate was made before the hearing.

7.

At all times pertinent herein complainant has been a good employee and has performed all of the duties of his employment with the LaSalle Parish School Board in accordance with the requirements of his office and that all of the alleged allegations of "willful neglect of duty, incompetency, and dishonesty" are totally without basis, false and slanderous, which charges were brought solely for the purpose of dismissing Cleveland Riser, Jr. from his employment with the LaSalle Parish School Board in an attempt to circumvent previous orders of the United States District Court, Western District of Louisiana, Alexandria Division.

8.

Under the pendent jurisdiction of this Court, Cleveland Riser, Jr. appeals the action of the School Board on June 3, 1983 dismissing him as an action taken in violation of Louisiana Revised Statute 17:443 as well as for the other reasons previously set out herein.

9.

Cleveland Riser, Jr., under Louisiana State law, specifically Louisiana Revised Statute 17:443, has the right to appeal the action of the School Board to "a Court of competent jurisdiction for a full hearing to review the action of the School Board, and the Court shall have jurisdiction to affirm or reverse the action of the School Board in the matter."

10.

Complainant, Cleveland Riser, Jr., has been severely injured and personally damaged by the actions of the defendants herein in the following particulars:

(1)	Psychological distress due to the deprivation of Constitutional rights	$1,500,000.00
(2)	Embarrassment, humiliation and emotional distress	$2,500,000.00
(3)	Loss of wages, past, present and future	$1,500,000.00
(4)	Punitive damages	$2,000,000.00
(5)	Attorney's fees	$ 50,000.00
Total Damages		$6,550,000.00

11.

Complainant is entitled to a judgment declaring that the termination by the LaSalle Parish School Board is in violation of the rights and privileges guaranteed by the Constitution of the United States and the Act of Congress of the United States previously cited herein and thus should be granted an injunction against the LaSalle Parish School Board and the Superintendent of Schools of the LaSalle Parish School Board reversing the termination of Cleveland Riser, Jr. and ordering him reinstated in

his previous position with full benefits, including but not limited to retirement, back pay and tenure.

WHEREFORE, COMPLAINANT, CLEVELAND RISER, JR., PRAYS that after due proceedings had, judgment be rendered in his favor against the defendants, individually, jointly and in solido, in the full sum of SIX MILLION FIVE HUNDRED FIFTY THOUSAND AND NO/100 ($6,550,000.00) DOLLARS, as restitution for the items of damage alleged in the complaint set out above, as well as for a judgment declaring the termination of complainant to be in violation of law and ordering the reinstatement of Cleveland Riser, Jr. with full benefits, past, present and future, that are attendant to said position as well as enjoining the defendants from in any way seeking to terminate complainant from said position or taking any action in furtherance of the illegal desire to terminate complainant from his employment with the LaSalle Parish School Board as well as assessing defendants with all costs of these proceedings.

BOLEN & ERWIN, LTD.
A PROFESSIONAL LAW CORPORATION

By /s/ James D. Kirk
James D. Kirk

By /s/ Gregory S. Erwin
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ATTORNEYS FOR COMPLAINANT,
CLEVELAND RISER, JR.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CIVIL ACTION
NO. 83-2237

CLEVELAND RISER, JR.

versus

LASALLE PARISH SCHOOL BOARD, ET AL

FOR PLAINTIFF:

BOLEN & ERWIN, LTD.
S. Scott Chemino & Gregory S. Erwin
P.O. Box 906
Alexandria, LA 71309

FOR DEFENDANTS:

GAVEL & BRADY
James J. Brady
P.O. Box 1792
Alexandria, LA 71301

DEUTSCH, KERRIGAN & STILES
Frederick R. Bott, Barbara Ryniker Evans
& Bernard Marcus
755 Magazine St.
New Orleans, LA 70130-3672

NAUMAN S. SCOTT
SENIOR UNITED STATES DISTRICT JUDGE

OPINION

On September 22, 1983, plaintiff filed the instant action, alleging that the termination of employment by the School Board on June 3, 1983 violated the First and Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1981, *et seq.* Plaintiff alleged that he was terminated because he was black, because he participated in a re-districting action filed by the United States, and because of a prior lawsuit, Civil Action No. 79-0761, wherein we held that Cleveland Riser, Jr. was unfairly denied the opportunity of appointment as Assistant Superintendent of the LaSalle Parish School Board.

Plaintiff also pleaded a State law claim under the Teacher Tenure Act (La. R.S. 17:443, *et seq.*), which was dismissed by this court on July 25, 1984, and affirmed by the Fifth Circuit Court of Appeals. *Riser v. LaSalle Parish School Board,* No. 84-4726, Slip Op. at p. 2-3 (May 9, 1985).

In October 1984, long after plaintiff brought the instant action, plaintiff filed a State court suit. *Riser v. LaSalle Parish School Bd.,* No. 20,579 (28th Jud. D. Ct., Sept. 12, 1985). The defendant excepted because the one year period for appeal had passed. Before argument thereon, the State court dismissed the suit without prejudice.

The defendants filed a Motion for Summary Judgment based upon the case of *University of Tennessee v. Elliot,* 106 S.Ct. 3220 (1986), which we denied.

The matter was tried before this court on January 8, 1986 [SIC] to determine whether the termination of Mr. Riser was discriminatory and in violation of 42 U.S.C. §§ 1981 and 1983.

FINDINGS OF FACT

1. Plaintiff, Cleveland Riser, Jr., was supervisor of

Auxiliary Programs for LaSalle Parish School Board until he was discharged from employment on June 3, 1983. As such, he was in charge of the General Equivalency Degree (hereinafter GED), Program, and students therein.

2. On or about May 3, 1983, plaintiff was served with written charges of willful neglect of duty, incompetency, and dishonesty, based on seven separate instances of sexual harassment.

3. The seven complaints of sexual harassment were listed in the notice of written charges, with a brief description of the offensive conduct, as well as the names of each complaining witness, all female students enrolled under plaintiff's supervision in the LaSalle Parish School Board's adult education program.

4. A hearing on the foregoing charges was held by the LaSalle Parish School Board on June 2 and 3, 1983, at which the School Board and the plaintiff were each represented by counsel. Witnesses were examined and cross-examined, arguments were made by both parties. The School Board unanimously found plaintiff guilty of seven charges of sexual harassment, and that each separate charge constituted separate grounds for discharge under La. R.S. § 17:443.

5. We admitted the transcript from the School Board hearing on June 2 and 3 of 1983 into evidence by joint offer of plaintiff and defense counsel.*

6. At the School Board hearing on June 2 and 3, 1983, counsel for Mr. Riser cross-examined all complainants and produced nineteen witnesses on behalf of Mr. Riser. Only one of those witnesses, Mr. Chester Floyd, had

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* The plaintiff was *not* permitted to call eight witnesses that testified at the School Board hearing below. Both counsel stipulated that each of the eight witnesses would have given substantially the same testimony as that contained in the School Board hearing transcript.

any direct testimony concerning the alleged improper motives of or conspiracy by members of the School Board in terminating Mr. Riser. Mr. Floyd testified that Bass stated:

> "Well, we, we dina got off of this hard part a little bit and, talking and he just lent over his deak right right toward me and he just kinda shut up his hand and lent over and said: Chester, said: *I want to tell you the whole damn thing in a nutshell; he said: Dr. Riser — no, if we lose this case, he was a-bumping on his desk, said: If we lose this suit and Dr. Riser is going to be your superintendent and said: we're just not going to have it. Said: we're not going to stand for it.* That's — with his hands sitting on the desk and bumping it a little bit. That was our parting words right there. Only, be good and..." (See Hearing of June 3, 1983, Tr. P. 63, L. 17.)

However, both Mr. Bass and Mr. Coleman testified that Mr. Bass denied making the statement. Furthermore, the remaining substance of Mr. Floyd's recollection of his conversation with Mr. Bass supports defendant's contention that the charges were brought in good faith. Other than the testimony of Mr. Floyd, there was no direct evidence to support plaintiff's averments that there was a conspiracy of race discrimination or of retaliatory action by the School Board because of plaintiff's prior action against the Board in 1979. Furthermore Bass was not a member of the Board; he was the superintendent and there is nothing in his statement that alleges that any member of the Board or any complaining witness had, individually or in concert with each other, engaged in any act of conspiracy.

7. At the trial of this matter on January 8, 1987 in Alexandria, Louisiana in this court, the plaintiff

produced no new evidence to support averments of race discrimination or of a conspiracy to retaliate against the plaintiff.

CONCLUSIONS OF LAW

1. We have jurisdiction over this cause. 42 U.S.C. § 1981.

2. We do not hear this matter as a court of appeal. Louisiana statutes, La. R.S. 17:443, provide an orderly process for appeal, but plaintiff failed timely to avail himself of that appeal. If, in fact, he received due process in defense of the charges brought against him, then his rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1981 and 1983 have not been violated and he can take nothing by this suit.

3. We conclude that plaintiff was accorded an "adequate opportunity to litigate" any issues which he desired at the School Board hearing on June 2 and 3, 1983. "When a State agency acting in a judicial capacity resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, Federal courts in actions under the Reconstruction Civil Rights Statutes must give the agency's fact finding the same preclusive effect to which it would be entitled in the State's courts." *University of Tennessee, et al v. Elliot,* 106 S.Ct. 3220, 3222 (1986).

3. The Louisiana Supreme Court requires that the School Board decision be supported by "substantial evidence." *Lewing v. DeSoto Parish School Board,* 238 La. 43, 113 So.2d 462, 466 (1959). The direct testimony at the LaSalle Parish School Board hearing by the seven women who claimed to have been sexually harassed constituted substantial evidence for the Board's decision to terminate plaintiff for "willful neglect of duty, incompetency and

dishonesty." In *Phillips v. Plaquemines Parish School Board,* 465 So.2d 53, 55 (La.App. 4th Cir. 1985), *cert. denied,* 467 So.2d 540 (1985), one instance of sexual harassment by a tenured teacher was held to be a "substantial basis for the Board's finding of incompetency." *See also, Jones v. Jefferson Parish School Board,* 533 F. Supp. 816, 822 (E.D. La. 1982), *aff'd.* 688 F.2d 837 (5th Cir. 1982).

5. As stated in Paragraph 6 under our findings of fact, there was no direct evidence that any School Board member or complaining witness somehow participated in a conspiracy to retaliate or discriminate against the plaintiff, Cleveland Riser, Jr. Superintendent Bass' statement as understood by Mr. Floyd is, if true, a declaration of prejudice on the part of Bass, but mentions no School Board member, none of the complaining witnesses against Riser; it fails to mentioin conspiracy, allege the membership in any such conspiracy or any act done in furtherance of the object of the conspiracy. It fails to suggest or account for the means used to induce each of the complaining student witnesses to commit perjury and testify falsely in the School Board hearing. This accusation cannot find foundation and validity in the unsupported assertion of the plaintiff. Therefore, we find that plaintiff was accorded a fair hearing, with full due process guarantees being accorded by the School Board on June 2 and 3, 1983. The Board complied with all statutory guidelines. And, plaintiff was represented by counsel, allowed to cross-examine the witnesses on behalf of the Board, and also allowed to present nineteen witnesses on his own behalf.

6. Consequently, based upon our review of the evidence adduced at the June 2 and 3, 1983 hearing, as well as the evidence produced at the trial of this matter on January 8, 1986, we find that defendants had a legitimate and just cause for terminating plaintiff's employment.

7. Furthermore, plaintiff has failed to establish by a preponderance of the evidence that the School Board's decision to terminate employment of plaintiff on June 4, 1983 was premised upon an underylying motive of discrimination or retaliation because of plaintiff's race and/or exercise of constitutional or statutory rights.

We therefore find judgment in favor of the defendant and dismiss plaintiff's claims.

DONE AND SIGNED at Alexandria, Louisiana, this third day of February, 1987.

/s/ Nauman S. Scott

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CLEVELAND RISER, JR.	:	
— vs —	:	CIVIL ACTION NO. 83-2237
LASALLE PARISH SCHOOL BOARD, ET AL	:	

J U D G M E N T

This matter having come on for hearing, hearing having been had and evidence adduced; the law and evidence being in favor of the defendant, for written reasons this day assigned, it is

ORDERED, ADJUDGED AND DECREED that there be judgment herein favor of the defendants, LaSalle Parish School Board, Edgar J. Bass, the individual members of the LaSalle Parish School Board: W.O. Poole, Bill Hester, Robert Ponds, Shelby Norris, Harlan Morgan, W.V. McCartney, Robert Day, J.D. Frazier, and Ira Ganey, and against plaintiff, Cleveland Riser, Jr., all at plaintiff's cost.

Alexandria, Louisiana this third day of February, 1987.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4098
Summary Calendar

CLEVELAND RISER, JR.,

Plaintiff-Appellant,

versus

LASALLE PARISH SCHOOL BOARD,
ET AL.,

Defendant's Appelles.

Appeal from the United States District Court for the
Western District of Louisiana
(CA 83-2237 A)

(JULY 23, 1987)

Before REAVLEY, RANDALL and JOLLY, Circuit Judges.

REAVLEY, Circuit Judge:*

Cleveland Riser appeals the district court's judgment in favor of LaSalle Parish School Board in his action against it under 42 U.S.C. § 1981. Riser alleged that the school board terminated his employment because he is

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

black and because he had previously participated in legal action against the school board. His challenge in this appeal centers on the fact that the district court would not allow live testimony by witnesses who had previously testified at the school board's termination hearing. We affirm.

Riser was employed by the school board as Supervisor of Auxiliary Programs, in charge of the General Equivalency Degree Program, when he was served with written charges of willful neglect of duty, incompetency, and dishonesty. The charges were based on seven separate complaints of sexual harassment of female students enrolled in the adult education program that Riser supervised. On June 2 and 3, 1983, a hearing was held, at which the seven students testified, and at which both Riser and the board were represented by counsel. The board unanimously found Riser guilty of the seven charges of sexual harassment, and found that each separate charge is a sufficient ground for discharge under Louisiana law. La. Rev. Stat. Ann. § 17:443.

Riser then filed the instant action in federal district court. The judge admitted into evidence the transcript of the school board hearing, but refused to allow the same witnesses to testify again. He noted that Riser had called eight reputation witnesses at the hearing, and that he (Judge Scott) would normally allow a party to call only three such witnesses. The judge allowed a stipulation that the character witnesses' testimony would be the same as in the school board proceeding.

Prior t the instant action, Riser participated in a redistricting action filed by the United States against the school board, and he also litigated a case in which Judge Scott held that Riser was unfairly denied the opportunity to become Assistant Superintendent of the LaSalle Parish School Board. Riser now maintains that his dismissal is in violation of his rights under the First and Fourteenth

Amendments to the United States Constitution, as well as the Civil Rights statutes, 42 U.S.C. §§ 1981, 1983.

In *Mt. Healthy City School District v. Doyle,* 429 U.S. 274, 287, 97 S.Ct. 568, 576, 50 L.Ed.2d 471 (1977), the Supreme Court, in dealing with a case similar to the instant one, stated:

> Initially, in this case, the burden was properly placed upon respondent to show that his conduct was constitutionally protected, and that this conduct was a "substantial factor" — or to put it in other words, that it was a "motivating factor" in the Board's decision not to rehire him. Respondent having carried that burden, however, the District Court should have gone on to determine whether the Board had shown by a preponderance of the evidence that it would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct.

Riser's prior criticisms of the school board do constitute protected conduct. The difficulty with his position, however, is that he has presented no evidence to show that this conduct was casually related to the termination. Moreover, even if Riser had met the initial burden of proving the board's decision was motivated substantially by the protected conduct, under the evidence the board would have been justified in terminating him. If the allegations of seven instances of sexual harassment of students are true, this is an overwhelming reason to believe that the board "would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct." *Doyle,* 429 U.S. at 287, 97 S.Ct. at 576. In *Phillips v. Plaquemines Parish School Board,* 465 S.2d 53 (La. App. 4th Cir.), *cert. denied,* 467 So.2d 540 (1985), a former tenured principal alleged neither that he was black nor that he had engaged in constitutionally protected conduct. Neverthe-

less, the Louisiana appeals court affirmed the school board's harassment. There is every reason to believe that other school boards should act likewise.
other school boards should act likewise.

Riser's contention that he did not have an opportunity to fully litigate his claim is also without merit. The district judge game him an opportunity to present evidence not presented at the school board hearing. Four of the complaining witnesses were present at the federal district court trial pursuant to a subpeona. Riser was offered the opportunity to cross-examine them, yet he chose not to do so. The judge was highly familiar with Riser's prior protected conduct, having been the same judge to find in Riser's favor in a prior lawsuit against the board. The only excluded testimony was that which would have been repetitious. Riser's appeal is without merit.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 87-4098

CLEVELAND RISER, JR.,

Plaintiff-Appellant,

versus

LASALLE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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ON PETITION FOR REHEARING

(August 31, 1987)

Before REAVLEY, RANDALL and JOLLY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley

UNITED STATES CIRCUIT JUDGE